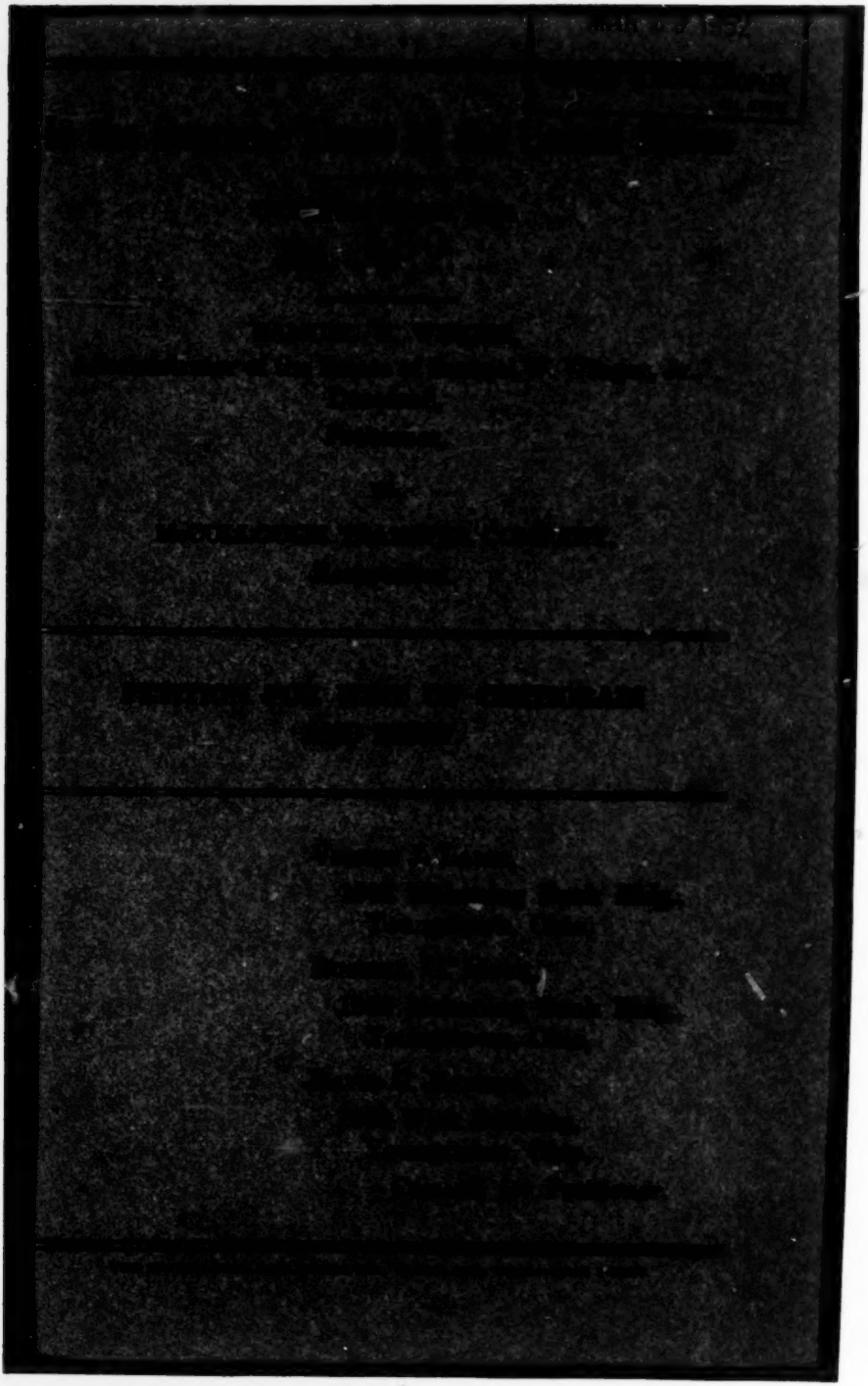

INDEX.

Petition for Writ of Certiorari 1

Reasons Relied on For Allowance of the Writ 2

Jurisdiction 3

Verification 5

Brief of Petitioner on Petition for Writ of Certiorari 7

Statement of Case 7

Specifications of Error 8

Argument and Law 9

Appendix. Opinion of the Court of Appeals of Mahoning County, Ohio 19

TABLE OF AUTHORITIES.

Cases.

Brown, Admx., v. L. H. Bottoms Truck Lines, Inc., 227 N. C. 299, 42 S. E. 2d 71 11

Hodges, et al., v. Johnson, et al., 52 Fed. Sup. 488 13

U. S. v. La Tuff Transfer Service, U. S. District Court, Minnesota, Third Division, 95 Fed. Supp. 375 15

Venuto v. Robinson, et al., 118 Fed. 2d 679 12

Constitutions.

Constitution of Ohio 1, 3

Constitution of the United States 3

Statutes and Rules.

28 U. S. C. A. Section 1257 3

Interstate Commerce Act, 49 U. S. C. A. Sections 301 to 327 ..... 2, 8, 9, 18

Section 302 9

Section 315 ..... 10, 14

Section 324 10

Section 325 10

Ohio General Code, Section 614-115 13

Rules and Regulations of the Interstate Commerce Commission:

Rule 4 14

Rule 166.1 11

Rule 166.2 11

In the Supreme Court of the United States

OCTOBER TERM, 1951.

No. . . . . . .

SAMUEL W. WINGER,
Administrator of the Estate of Samuel W. Winger, Jr.,
Deceased,
Petitioner,

vs.

McCULLOUGH TRANSFER COMPANY,
Respondent.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable Chief Justice
and Associate Justices of the
Supreme Court of the United States:

Your petitioner, Samuel W. Winger, Administrator of the Estate of Samuel W. Winger, Jr., deceased, a citizen of the State of Pennsylvania, respectfully prays for a writ of certiorari herein to review a final judgment of the Court of Appeals of the Seventh Judicial District, Mahoning County, Ohio, being the highest court of said state passing upon the questions involved in the above entitled action, since the Supreme Court of Ohio, under constitutional right of Ohio Constitution, Sections 2 and 4, Article IV, in its discretion refused to certify for review the said record of the Court of Appeals of the Seventh Judicial District, said motion being overruled on the 5th day of De-

cember, 1951, being case No. 32,788 in the Supreme Court of Ohio. A certified transcript of the proceedings is filed herewith. (R., 78 to 89.)

Your petitioner, Samuel W. Winger, Administrator, presents a summary statement of matters involved:

Action in Ohio for wrongful death of a rider in an interstate motor carrier truck who was instantly killed when thrown from the cab of said truck to the highway when the truck collided with another automobile, based in part upon Part 2 of Interstate Commerce Act of February 4, 1887, as amended September 18, 1940, being Title 49, Chapter 8, Sections 301 to 327 inclusive, USCA, and the Administrative Rules and Regulations of the Interstate Commerce Commission establishing the law relative to the operation of motor trucks in interstate commerce under a franchise granted by the Interstate Commerce Commission of the United States. (R., 1 to 3.)

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

(a) The case was tried in the Common Pleas Court of Mahoning County, Ohio, and resulted in a verdict by a jury and a judgment rendered thereon in favor of the petitioner. The respondent (defendant) appealed to the Court of Appeals of the Seventh Judicial District, Mahoning County, Ohio, which reversed said judgment and entered final judgment in favor of the respondent. Petitioner applied to the Ohio Supreme Court for an order to certify the record in the Court of Appeals, which motion was denied. (R., 88.)

(b) The Court of Appeals, Seventh Judicial District of Ohio, failed and refused to apply Part 2 of the Interstate Commerce Act, Title 49, Chapter 8, USCA, and refused to apply the Administrative Rules and Regulations

of the Interstate Commerce Commission pertaining to the operation of interstate motor carriers wherein said statutes and regulations were passed and adopted for the benefit of the traveling public, among them the decedent herein.

(c) The petitioner, by the action of the Court of Appeals in reversing the verdict of the jury and entering final judgment, has been deprived of the due process of law as guaranteed by the Constitution of Ohio and the Constitution of the United States.

(d) The question involved is of great general interest in that transportation by interstate motor trucks of freight and passengers is rapidly developing into a major industry. The public policy therefore requires a pronouncement by this Court of the responsibilities of the franchise holders, otherwise the public is deprived of the safeguards required by the Federal Statutes and the Rules and Regulations of the Interstate Commerce Commission.

(e) A decision by this Court would end the confusion and ramifications now found in the conflict of authority of the several states caused by the plans, subterfuge and schemes to evade the law whether by lease, agency or other device which disguises the true nature of transportation in interstate commerce.

JURISDICTION.

The statutory provision which is relied upon to sustain the jurisdiction of the Supreme Court of the United States is Title 28, Chapter 81, Section 1257 USCA.

Section 1257:

> Final judgments or decrees rendered by the highest court of a state in which a decision could be had may be reviewed by the Supreme Court as follows:

* * * * *

(3) By writ of certiorari * * * where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. (Adopted June 25, 1948.)

Wherefore petitioner prays that a writ of certiorari issue under the seal of this Court directed to the Court of Appeals, Seventh Judicial District, at Youngstown, Mahoning County, Ohio, commanding said Court to certify and send to this Court a full and complete transcript of the proceedings of the said Court of Appeals had in case No. 3366 and entitled on its docket as follows: Samuel W. Winger, Administrator of the Estate of Samuel W. Winger, Jr., Deceased, plaintiff-appellee, v. McCullough Transfer Company, defendant-appellant.

A copy of the opinion of the Court of Appeals of the Seventh Judicial District of Ohio will be found on pages 85 to 87 of the record, and for convenience is also attached hereto as an appendix.

Respectfully submitted,

VENICE J. LAMB,
RUSSELL G. MOCK,
DAVID C. HAYNES,
Attorneys for Petitioner.

STATE OF OHIO, MAHONING COUNTY, SS.

David C. Haynes, being first duly sworn, says that he is one of the attorneys for the petitioner, Samuel W. Winger, Administrator, of the estate of Samuel W. Winger, Jr., Deceased, and makes this verification duly authorized in the premises for and in his behalf; that he has read the foregoing petition and that the allegations contained therein are true as he verily believes.

DAVID C. HAYNES.

Sworn to before me and subscribed in my presence this 20th day of February, 1952.

JAMES G. NUTH,
Notary Public.
My Commission Expires
November 28, 1954.

(Notarial Seal)

I do hereby certify that I am a member of the Bar of the Supreme Court of the United States and that I have assisted in the preparation and have examined the foregoing petition and that in my opinion it is well founded and the case is one in which the prayer of the petitioner should be granted by this Court.

DAVID C. HAYNES.